



Order below Exh. 5 in Special Civil Suit
No.78/2020
CNR No.MHKO050035302020
Aditya Rajratan Agrawal
versus
Rajratan Babulal Agrawal, etc.

The present application is filed by son (coparcener) against the father (Karta) and mother for restraining them from transferring, alienating the suit property to third person and further for restraining them for creating encumbrances over the suit property.

Suit Property:-

2. Landed property situated at Ichalkaranji, Tal.Hatkanangale, Dist.Kolhapur, bearing old C.S.No.5977/C, T.P. Scheme No.2, final plot No.75, area ad-measuring 487 Sq.Mt., 5240 Ft. and the purchased apartment type building, having four boundaries East-Plot No.8 of Sohanlal Heda, West-Plot No.6 of Narendra Patil, South-cloth market housing society complex (more particularly described in para 1 of T.I. application (Exh.5)).

Contents of the application in short are as under:-

3. The grandfather of the plaintiff namely Babulal had started business by name Shri. Rajlaxmi Traders in the year 1986. Defendant No.1 (father) was looking after the business as partner and Babulal had given all authorities to defendant No.1 for running the business. Babulal died on 17.1.2001. Defendant No.1 with the help of defendant No.2 (mother) conducted the business successfully and have purchased many properties, out

of the income of the joint family business. According to the plaintiff, the suit property is purchased by defendant No.1 on 29.3.2016 out of the amount received from joint family income. According to plaintiff he has 1/6 share in the property along with defendants. According to the plaintiff, he was in need of money for higher education and defendant refused to give him money. Hence, according to plaintiff he demanded his share from the defendant No.1. But, he denied to give him his share. According to plaintiff defendant No.1 is mis-utilizing the income derived from the family business. Hence, the son (plaintiff) has filed present suit for partition and therein this interim application is filed to restrain defendants No.1 and 2.

Say of defendant Nos. 1 and 2:-

4. Defendant No.1 and 2 have appeared in the matter and they have denied the contents of the application vide say/written statement vide Exh.18. They have admitted the fact that after the death of Babulal, the joint business of Shri. Rajlaxmi Traders was conducted by them successfully. According to them they required capital for running the business and for that purpose some time they need to mortgage the property. According to them, said fact is explained to the plaintiff. But, plaintiff is not ready to co-operate with the family. Hence, according to defendant Nos. 1 and 2 the present suit is filed only to harass them. According to defendant plaintiff is 19 years old by and he does not understand what is good for him. Further, according to them, plaintiff is not ready to look after the business and the suit is filed under the

instigation of other persons. Hence, they prayed to reject the application.

5. Following points are arise for my determination. I have recorded my findings thereon for the reasons stated below

<u>SR.</u>	<u>POINTS</u>		<u>FINDINGS</u>
1)	Whether the plaintiff proves that prima facie case is in his favour ?	:	In the negative.
2)	Whether the plaintiff proves that balance of convenience lies in his favour ?	:	In the negative.
3)	Whether the plaintiff proves that, if injunction is not granted he has to suffer irreparable loss ?	:	In the negative.
4)	What order ?	:	As per final order.

REASONS

6. Heard Learned Advocates of both parties. Perused documents filed on record by both parties.

7. The **main** question involved in the present application is whether the injunction can be granted against the Karta from alienating the suit property. Here I rely upon the judgment of Hon'ble Supreme Court **Sushil Kumar and Anr. Versus Ram Prakash and ors.** Reported in 1998 AIR 576. Wherein it is held that,

“the coparcener cannot move the Court to grant relief of injunction restraining the Karta from alienating the coparcenary property”.

8. In the present application the plaintiff is merely stating that defendant No.1 is mis-using the funds received from

the income of joint family business. However, apart from that plaintiff has not brought any positive prima facie evidence on record to show that defendant No.1 Karta is wasting or mis-using the ancestral property. It is to be noted that, though the coparcener takes by birth an interest in the ancestral property, but he is not entitled to separate possession over it. His rights are not independent of the control of the Karta. It would be for the Karta to consider the actual pressure on the joint family estate. It would be for him to foresee the danger to be averted. And it would be for him to examine as to how best the joint family estate could be beneficially put into use to subserve the interests of the family. A coparcener cannot interfere in these acts of management.

9. Hence, plaintiff has not made out the case for grant of temporary injunction. **Therefore, in view of above discussion I answered point Nos. 1 to 3 in the negative.**

As to point No.4:-

I have answered point Nos. 1 to 3 in the negative. Therefore, in view of above discussion, present application is liable to be rejected. **Hence, I proceed to pass following order.**

ORDER

Application (Exh.5) is hereby rejected with costs.

Date:07-10-2021.

Sd/-
(Amit P. Kokare)
Civil Judge, Senior Division,
Ichalkaranji, District Kolhapur.